

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GARY KOOPMANN, TIMOTHY KIDD and
VICTOR PIRNIK, Individually and on Behalf of
All Others Similarly Situated,

Plaintiff(s),

v.

FIAT CHRYSLER AUTOMOBILES N.V.,
FCA US, LLC, RONALD ISELI AND
ALESSANDRO BALDI, AS CO-EXECUTORS
FOR THE ESTATE OF SERGIO
MARCHIONNE, SCOTT KUNSELMAN,
MICHAEL DAHL, STEVE MAZURE and
ROBERT E. LEE,

Defendants.

Case No.: 15-cv-07199-JMF

CLASS ACTION

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF CLASS
REPRESENTATIVES' MOTION FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND AWARD OF ATTORNEYS' FEES AND EXPENSES AND
COMPENSATORY AWARDS TO CLASS REPRESENTATIVES

Class Representatives Gary Koopmann, Timothy Kidd, and Victor Pirnik (collectively, “Plaintiffs”), on behalf of themselves and the Class, respectfully submit this reply brief to update the Court regarding objections and requests for exclusion received since the filing of Plaintiffs’ opening papers on August 1, 2016 and to provide the Court with data on the claims rate, opt-out rate and estimated mean recovery per claimant as required by the Preliminary Approval Order (Dkt. 356, ¶23.).

As of August 28, 2019, the Claims Administrator has mailed a total of 205,618 Notice and Claim Forms to potential Class members or nominees. *See* Supplemental Declaration of Matthew Mulvihill Regarding: (A) Mailing Of The Notice and Proof of Claim; (B) Publication of the Summary Notice, and (C) Report on Requests for Exclusion (“Mulvihill Supp. Decl.”), dated August 28, 2019, attached hereto as Exhibit 1, ¶ 3. The Claims Administrator also published the Summary Notice in *Investor’s Business Daily* and transmitted over the *PR Newswire* on May 6, 2019 and posted the Notice and Claim Form, the Preliminary Approval Order, and the Stipulation of Settlement and its exhibits for download on its website. *Id.* ¶ 5. The website, which the Claims Administrator continues to maintain, has received 22,571 visits to date. *Id.*

Class Members have responded positively. The deadline to submit objections and requests for exclusion was August 15, 2019. *See* Order Preliminarily Approving Settlement and Providing for Notice, entered on April 10, 2019 (ECF No. 356) (“Preliminary Approval Order”), ¶¶ 10, 14. As of August 28, 2019, there have been ***no objections*** to the Settlement, plan of allocation or application for attorneys’ fees. Mulvihill Supp. Decl., ¶ 8. Only eleven Class Members have requested exclusion from the Settlement, which is only 0.0535% of the Notices mailed, and 0.18490% of the Claim Forms submitted. *Id.* at ¶ 7. Those requesting exclusion

purchased in aggregate only 7,452 shares during the Class Period, which represents only 0.00145% of the total shares in all Claim Forms submitted. *Id.* Moreover, not a single request for exclusion criticizes the Settlement or the requested attorneys' fees and expenses. Therefore, the relatively few requests for exclusion support the motion for final approval of settlement and counsels' request for attorneys' fees and expenses.

Moreover, there have been no objections to the request for \$2,603,672.79 in expenses that were actually and reasonably incurred litigating this Action. That number is far below the \$2,800,000 in litigation expenses indicated in the Notice. There have also been no objections to the request for \$45,000 in compensatory awards to the Class Representatives (\$15,000 to each).

The positive reaction of the Class thus confirms the fairness, adequacy, and reasonableness of the Settlement, the Plan of Allocation, and the request for attorneys' fees, expenses, and Plaintiffs' compensatory awards. It has long been held that the "[L]ack of objections from the class ... supports approval of the proposed settlement." *In re Franklin Natl. Bank Secs. Litig.*, No. MDL 196, CV 75-684 (JBW), 1980 U.S. Dist. LEXIS 17277, at *54 (E.D.N.Y. Jun. 25, 1980). Indeed, concluding that a lack of objections and minimal requests for exclusion were "indicative of the adequacy of the settlement," Judge Wood recently noted that "Class members' favorable reaction to the settlement 'is perhaps the **most significant factor** in [the] Grinnell inquiry.'" *Woburn Ret. Sys. v. Salix Pharms., Ltd.*, No. 17 Civ. 8925 (KMW), 2017 U.S. Dist. LEXIS 132515, at *7 (S.D.N.Y. Aug. 18, 2017) (emphasis added) (citing *Wal-Mart, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 119 (2d Cir. 2005). *Accord Maley v. Dale Gloval Techs. Corp.*, 186 F. Supp. 2d 358, 362-63 (S.D.N.Y. 2002) (same). *See also See D'Amato v. Deutsche Bank*, 236 F.3d 78, 86-87 (2d Cir. 2001) ("The District Court properly concluded that this small number of objections [18 objections to settlement with 27,883 class notices sent]

weighted in favor of the settlement.”); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 457, 458 (S.D.N.Y. 2004) (six objections out of a class of approximately one million was “vanishingly small” and “constitutes a ringing endorsement of the settlement by class members”); *Precision Assocs., Inc. v. Panalpina World Transp. (Holding) Ltd.*, No. 08-cv-42, 2013 WL 4525323, at *7 (E.D.N.Y. Aug. 27, 2013) (approving settlement where 183 members out of “hundreds of thousands” opted out, and two objected).

For Claim Forms to be timely, they must be postmarked no later than August 28, 2016. As of August 28, 2016, approximately 5,949 Claim Forms have been submitted to the Claims Administrator and processed. Mulvihill Supp. Decl., ¶ 6. Approximately 2,798, or 47%, of the submitted Claim Forms have preliminarily been determined to be valid, consisting of approximately 349 million shares (43 million of which had a recognized loss) with a total recognized loss (after netting each claimant’s gains and losses) of approximately \$41 million. *Id.* Plaintiffs’ damages consultant has estimated that there were likely between 258 million and 420 million retained shares during the Class Period.¹ The per-share recovery for the valid claims is approximately \$1.72, and the mean recovery per valid claimant is approximately \$26,700 (after deducting estimated fees and expenses identified in the Notice). *Id.*

The above Class Member participation figures will increase substantially because on August 27, 2019 alone approximately 2,000 additional claims were submitted that were not included in the above calculations. *Id.* ¶ 6 n.2. It is common for the Claims Administrator to receive a large number of Claim Forms on or near the deadline. Here, given that the deadline was

¹ Estimating the number of retained and/or damaged shares, an already difficult endeavor reliant on numerous assumptions and models, is particularly challenging in this case given that FCA’s stock traded in foreign exchanges but only shares traded in the United States were eligible to participate in the Settlement.

a day before this filing, the Claims Administrator anticipates receiving more Claim Forms postmarked on or near August 28, 2016. *Id.*

Class Counsel will provide updated claims information at the Fairness Hearing on September 5, 2019.

Accordingly, Plaintiffs respectfully request that the Court (1) grant final approval of the Settlement; (2) enter the Proposed Final Judgment and Order of Dismissal with Prejudice (ECF No. 358-1); (3) award Class Counsel attorneys' fees in the amount of \$32,205,398.31 and reimbursement of \$2,603,672.79 in litigation expenses that were actually and reasonably incurred in this Action, and (4) award \$45,000 in compensatory awards for the Class Representatives (in total).

Dated: August 29, 2019

Respectfully submitted,

POMERANTZ LLP

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CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of August 2019, a true and correct copy of the foregoing document was served by CM/ECF to the parties registered to the Court's CM/ECF system.

/s/ Jeremy A. Lieberman

Jeremy A. Lieberman